

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 27, 2009

LaDonna Castañuela, Chief Clerk
Texas Commission on Environmental Quality
P.O. Box 13087, MC 105
Austin, Texas 78711-3087

CHIEF CLERKS OFFICE

2009 OCT 27 PM 3:31

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Re: Executive Director's Response to Motion to Overturn
Harris County Fresh Water Supply District No. 61 for Approval of Bonds
Docket No. 2009-1704-DIS

Dear Ms. Castañuela:

Enclosed for filing please find the original and seven copies of the Executive Director's Response to Motion for Rehearing.

Enclosed please also find one copy of this letter to you and one copy of the Executive Director's Response to Motion for Rehearing. Please file stamp these documents and return them to Dinniah C. Tadema, Attorney, Environmental Law Division, MC 173. If you have any questions or comments, please call me at (512) 239-0617.

Sincerely,

A handwritten signature in cursive script, reading "Dinniah C. Tadema".

Dinniah C. Tadema
Attorney
Environmental Law Division

Enclosures

cc: Mailing List

TCEQ Docket No. 2009-1704-DIS

IN THE MATTER OF HARRIS COUNTY §
§
FRESH WATER SUPPLY DISTRICT §
§
NO. 61 FOR APPROVAL OF BONDS §

BEFORE THE 27 PM 3:31
TEXAS COMMISSION ON
CHIEF CLERK'S OFFICE
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO MOTION TO OVERTURN

TO THE HONORABLE COMMISSIONERS OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

The Executive Director of the Texas Commission on Environmental Quality ("ED") files this response to the Motion to Overturn filed by Timothy G. Green, representing Randal A. Hendricks, Trustee ("Movant").

On October 16, 2009, Movant filed a motion to overturn the ED's Order Approving an Engineering Project and the Issuance of \$8,340,000 in Unlimited Tax Bonds for Harris County Fresh Water Supply District No. 61 ("Order"). The Order was issued on September 18, 2009, and mailed by the Office of the Chief Clerk on September 28, 2009. The ED respectfully requests that the Motion to Overturn be granted and that the Commission remand the matter to the ED for further action.

I. Introduction

On March 12, 2009, Harris County Fresh Water Supply District No. 61 ("District") submitted a bond application to the ED pursuant to TEX. WATER CODE §§ 5.122 and 49.181. In its application, the District requested approval of an engineering project and issuance of \$8,630,000 in bonds to finance: Water Plant No. 1 generator; Water Plant No. 3 recoating; Water Plant No. 4 additional construction costs; water line aerial crossing recoating; Huffmeister Road 8-inch wastewater line extension; wastewater line Phase 4 TV surveys and rehabilitation; clearing and grubbing, and construction costs for Phase 1B Detention Pond to serve Cy-Fair ISD High School Site No. 5; land costs for Cypress Creek Forest Detention Pond and Cy-Fair ISD High School Site No. 5 (Hendricks)

Phase 1B Detention Pond; internal utilities to serve Ravensway Townhomes; trunk facilities to serve Cy-Fair ISD High School Site No. 5; and water, wastewater, and drainage facilities serving single-family residential development in Cypress Creek Forest and Falls at White Oak.

On September 18, 2009, the ED issued an Order approving the engineering project for a reduced amount of \$8,340,000 of bonds at a maximum net effective rate of 6.72%. The ED's Order disallowed the funding of \$294,998, which included the disallowance of \$279,633 for land acquisition costs associated with a 10.201 acre detention pond serving Cy-Fair ISD High School Site No. 5 located in an existing Harris County Flood Control District Drainage easement.

II. Discussion

The ED's staff reviewed the District's bond application in accordance with TEX. WATER CODE § 49.181 and disallowed \$279,633 for land acquisition costs associated with the detention pond on the basis that the District had the right to utilize the acreage subject to an existing drainage easement. The ED's staff determined that there was an existing easement based on the 1990 Paving, Drainage, and Drainage Area Map¹ submitted by the District with its bond application. The 1990 Paving, Drainage, and Drainage Area Map denotes an area as the "PROP. 255' ~ H.C.F.D.D.E. (SHARED)" which staff determined to be a proposed easement which would have been effective at the time the District's bond application had been submitted. Based on the information available at the time, the ED staff concluded that the cost of the detention pond was ineligible for reimbursement from bond proceeds because it was an unnecessary expense. The District reviewed the Executive Director's proposed recommendation prior to issuance of the Order and did not object to the disallowance of the cost of the land for the detention pond.

After the ED issued an Order approving the project and issuance of tax bonds, the Movant contacted the ED's staff and claimed that the Executive Director's disallowance of the cost of the

¹ See Movant's Exhibit 2.

detention pond had been in error. The Movant alleged that the proposed easement shown on the 1990 map had never been granted or recorded. In support of this claim, the Movant provided a Title Report listing all easements for the detention pond site. The Title Report and attached surveys show no Harris County Flood Control District Drainage easement.² Because the Movant has provided documentation showing that there is no existing easement, the ED concludes that the land for the detention pond is a recoverable expense and should be included in the bond issuance. As a result, the ED requests that the matter be set on the next available Agenda, that the ED's September 18, 2009 Order be overturned, and that the matter be remanded to the ED for issuance of a new Order in accordance with the additional information contained in the Title Report and attached surveys.

III. Conclusion

Accordingly, the ED respectfully requests that the Commission remand the matter to the ED for further action as requested above.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Robert Martinez, Division Director
Environmental Law Division

by 

Dinniah C. Tadema
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(512) 239-3400
(512) 239-0606 (FAX)

² See Movant's Exhibit 3 at p. 2 and Sheets 1 and 2.

CERTIFICATE OF SERVICE

I certify that on October 27, 2009, the Original and 7 copies of the Executive Director's Response to Motion to Overturn was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk and was sent by first class mail, agency mail, and/or facsimile to the persons on the attached Mailing List.



Dinniah C. Tadema
Staff Attorney
Environmental Law Division
Texas Commission on Environmental Quality

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CHIEF CLERKS OFFICE

Mailing List
Harris County Fresh Water Supply District No. 61
TCEQ Docket No. 2009-1704-DIS

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